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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/612,445      | 07/02/2003  | Katarina Magnusson   | SG 03197            | 5438             |

7590 03/29/2005

JAMES RAY & ASSOCIATES  
2640 Pitcairn Road  
Monroeville, PA 15146

EXAMINER

RAYFORD, SANDRA M

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1772

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/612,445 | <b>Applicant(s)</b><br>MAGNUSSON, KATARINA |  |
|                              | <b>Examiner</b><br>Sandra M. Nolan   | <b>Art Unit</b><br>1772                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 January 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Claims***

1. Pursuant to the revisions in the 03 January 2005 amendment ("the last response") in reply to the 02 September 2004 office action ("the last office action"), claims 15-26 are pending.

### ***Objections/Rejections Withdrawn***

2. The objection to claims 7 and 9 is withdrawn in view of their cancellation.
3. The 35 USC 112 rejections of claims 7-14, stated in sections 8-10 of the last office action, are withdrawn in view of their cancellation.
4. The 35 USC 102 rejection of claim 7 is withdrawn in view of its cancellation.

### ***New Rejections***

#### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 15-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 63237950A (based on its Derwent abstract) in view of Koskiniemi et al (US 5,738,933).

The '950 abstract teaches the storing of food (use/advantage section) in multilayer structures that are retort sterilized (see the fourth, fifth, tenth and eleventh lines of the abstract). The structures have low density polyethylene (LDPE) skins (last sentence of abstract) and saponified ethylene/vinyl acetate core layers (see the fifth through the eleventh lines of the abstract).

"Saponified ethylene/vinyl acetate" is well-known to be another name for ethylene/vinyl alcohol resins.

The abstract does not teach the use of linear low density polyethylene (PE-LLD) in its core layer or the various other layers recited in dependent claims.

Koskiniemi is discussed in section 12 of the last office action. Note that it refers to LDPE as "PE-LD" and its packaging is used to contain "foodstuffs" (col. 6, line 19).

The references are analogous because they both deal with packaging having LDPE outer layers.

It would have been obvious to one having ordinary skill in the art at the time of the invention to subject the multilayer composites of Koskiniemi to the retort sterilization of the '950 abstract in order to sterilize the food contained therein.

The motivation to subject the multilayer composites of Koskiniemi to the retort sterilization of the '950 abstract is found at col. 6, line 19 of Koskiniemi and in the use/-advantage section of the abstract, where food containment are referred to.

It is deemed desirable to sterilize foods inside containers in order to facilitate the food's stability during transport and storage.

In the absence of convincing objective evidence to the contrary, the use of well-known packaging layers, e.g., ethylene/vinyl alcohol barrier layers, in the packaging employed in the process suggested by the combination of the '950 abstract and Koskiniemi is a matter of engineering choice, depending upon the properties desired in the final packaging.

### ***Response to Arguments***

8. Applicant's arguments with respect to claims 15-26 have been considered but are moot in view of the new ground(s) of rejection.

### ***Final Rejection***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

10. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Conclusion***

Any inquiry concerning this communication should be addressed to Sandra M. Nolan-Rayford, at telephone number 571/272-1495. She can be reached Monday through Thursday, from 6:30 am to 4:00 pm, ET.

If attempts to reach the examiner are unsuccessful, contact her supervisor, Harold Pyon, at 571/272-1498.

The fax number for patent application documents is 703/872-9306.

  
S. M. Nolan-Rayford  
Primary Examiner  
Technology Center 1700

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